

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1348 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NARESH SEVARAM MATREJA

Versus

POLICE COMMISSIONER

Appearance:

MS JAYSHREE C BHATT for Petitioner
Mr. Joshi for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE
Date of decision: 18/11/1999

ORAL JUDGEMENT

#. Leave to amend.

#. The petitioner came to be detained by an order of Commissioner of Police, Ahmedabad, dated 22th February, 1999, passed in exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

#. The detaining authority, namely, Commissioner of Police, Ahmedabad City was subjectively satisfied that the petitioner is a bootlegger and is a hindrance to public tranquility and public order. He is involved in two offences under the Bombay Prohibition Act. Because of his fear, people are not approaching appropriate authorities with complaint, but witnesses have stated about the involvement in such activities and his high handed and intimidating behaviour disturbing public order. The detaining authority, after verification, was subjectively satisfied about the truthfulness of the version of the witnesses about the incidents of 13th January, 1999 and 8th January, 1999. The authority also came to conclusion that it is a fit case where the names of the witnesses cannot be disclosed exercising privilege as envisaged under sub-section (2) of Section 9 of the PASA Act. He, therefore, detained the petitioner. The petitioner was in custody as he was remanded to police custody in connection with Crime Register No.5033/99. The detaining authority considered that when the petitioner will be produced before the Magistrate, on completion of the period of remand, he may be released on bail and may again get involved in his anti-social activities and, therefore, detention was the only remedy for preventing him from such activities.

#. The petitioner has approached this Court with this petition under Article 226 of the Constitution and has assailed the order of detention on various grounds. The major grounds are that the order is passed mechanically and without application of mind. There is no material whatsoever worth considering for exercise of powers under Section 9(2) of the PASA Act for claiming privilege. That the incidents narrated in the order cannot be considered so as to constitute act affecting public order. The petitioner was in judicial custody at the time when the detention order was passed. It is contended that the detaining authority has not taken into consideration the question of opposing the bail application or of cancelling the bail, if granted. The subjective satisfaction, therefore, would be vitiated.

#. Heard Ms. Bhatt. She restricted her argument only on the point of non-consideration by the detaining authority of question of cancellation of bail. She submitted that the petitioner was in custody when the order was passed and if the petitioner, on production before the Court, applied for bail, the application could have been opposed to by the detaining authority and if the Court granted bail, the authority could have considered the question of getting the bail cancelled.

This is not done and, therefore, in light of the decision rendered by this Court Letters Patent Appeal No.1056 of 1999 in Special Civil Application No.8650 of 1998, there is non-application of mind by the detaining authority which would vitiate the subjective satisfaction and, therefore, the impugned order may be quashed and set aside.

#. Mr. Joshi, learned Assistant Government Pleader has opposed this petition. He submitted that the detaining authority has taken into consideration all relevant aspects. The petitioner was involved in prohibition cases and he would have been released by the Court on bail. In that event, the petitioner would have again engaged himself in illegal activities and, therefore, the order was passed by the detaining authority in order to prevent him from doing such activities. The petitioner may, therefore, be dismissed.

#. Considering the grounds of detention, it is amply clear that the petitioner was in custody when the order came to be passed and the detaining authority apprehended an application for bail by the detenu and his release on bail thereafter. The detaining authority has not considered the possibility of opposing the bail application and/or approaching the Court for cancellation of bail. Not considering the question of cancellation of bail would be a clear case of non-application of mind as has been held by a Division Bench of this Court in the case of Yunusbhai Hasanbhai Ghanchi v. District Magistrate, in Letters Patent Appeal No.1056 of 1999 decided on 15th September, 1999. In that case, the Court observed:

"In the instant case, the fact regarding detenu on bail was very much in the mind of the detaining authority. It is reflected in the grounds of detention. But has not considered that the bail was likely to be continued in spite of the action being taken for cancellation of bail or that the said fact is reflected in the order of detention or in the grounds of detention.

10. In view of the fact that there is no application of mind on part of the detaining authority about this vital aspect, the subjective satisfaction can be said to be vitiated. Only on that ground, the Letters Patent Appeal deserves to be allowed and is, accordingly, allowed."

#. The case of the petitioner is on a still stronger footing. The petitioner was in custody. While in custody, the presumption is that he could not have continued the alleged activities. He could have secured bail only after approaching the Court. The detaining authority, therefore, ought to have, at least, considered the remedy of opposing the bail of the petitioner, if at all it is sought, while considering alternative less drastic remedy.

#. The order in question, therefore, suffers from the vice of non-application of mind on part of the detaining authority on these two vital aspects, viz. considering the less drastic remedy of opposing bail and/or getting the bail cancelled. The subjective satisfaction would, therefore, be vitiated. The petition, therefore, deserves to be allowed on this ground alone.

##. In view of the above discussion, the petition is allowed. The order of detention in respect of the petitioner-Naresh Sevaram Matreja, passed by Commissioner of Police, Ahmedabad, dated 11th February, 1999 is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L. DAVE, J.]

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